IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 11TH OCTOBER 2006 / 19TH ASWINA 1928

Bail Appl..No. 6072 of 2006

CMP.4704/2006 of JUDL.M.F.C.-I,ERNAKULAM
CRIME NO.26/2006 OF ERANAKULAM EXCISE RANGE

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PETITIONER/ACCUSED

M.G.BABY, S/O.GEORGE,
MUZHANGUMTHARA HOUSE,
NOW RESIDING AT 45/1451, PATHISSERY HOUSE,
KANNAMPILLY ROAD, PACHALAM,
ERNAKULAM.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REP. BY EXCISE INSPECTOR,
EXCISE RANGE OFFICE, ERNAKULAM,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

B.A. 6072/2006

DATED THIS THE 11TH DAY OF OCTOBER, 2006

O R D E R

The petitioner is accused of the offence punishable under Section 13 read with Sections 63 and 55 (i) of the Abkari Act, as the petitioner was found in possession of 14 litres of Indian made foreign liquor in his house.

2. The learned counsel submits that the liquor was purchased from the Kerala State Beverages Corporation. The arguments of the counsel for the petitioner is that there are adult members of the family, residing with him in the house. Therefore, it is submitted that as per circular No.A1-16579/98 dated 31.8.1998, at the time of the seizure, if a claim is set up by other members of the family, that a portion of the liquor belong to them, then the credit shall be given to such claim, and the mahazar prepared, shall be noting that claim also. However, in the same circular, it is stated that guiding principle is

whether an offence is committed or not, and not the mere possession of the liquor.

3. The learned Public Prosecutor, however, submitted that the seizure was effected on 1.10.2006, a dry day, and the 2nd October being Gandhi Jayanthy day, which is strictly observed as a dry day, the petitioner purchased a huge quantity of liquor and kept for sale.

4. This Court, at this stage, cannot come to the conclusion that the petitioner had kept it for sale, as there are adult members of the family as well. Considering circular dated 31.8.1998, which is brought to my notice, I am of the opinion that the petitioner could be released on bail, imposing such conditions, which are required, so that he can be closely observed by the police.

5. In the result, the application is allowed and the petitioner is granted bail subject to the following conditions:-

(a). The petitioner shall execute a bond for Rs.25,000/-, with two solvent sureties, each for the like sum, to the satisfaction of the Judicial Magistrate of First Class-I, Ernakulam.

(b). The petitioner shall report before the Investigating Officer, once in a week on every Sunday, between 10.00 a.m and 11.00 a.m., for a period of two months, starting from 15.10.2006.

J.M.JAMES
JUDGE

mrcs